



State of Utah

Department of Commerce

Division of Consumer Protection

DEBT-MANAGEMENT SERVICES PERMIT APPLICATION INSTRUCTIONS

General Instructions: Please respond to each item as requested. Responses such as “see contract” or “see materials” are not acceptable.

Required Applicant Information

Item 1: Please state the legal name of the organization (the applicant) applying to provide debt-management services in the State of Utah. This name usually takes the form of a legal entity such as a corporation (inc.), limited liability company (LLC), personal corporation (PC), or a partnership or limited partnership (LP).

Item 2: Please provide any additional names, if applicable, that the applicant will use or may be known by for the purposes of advertising, soliciting, or providing debt-management services. These may include shortened forms, abbreviations, or variations of the legal name of the applicant. It may be an unrelated name the applicant opts to use for increased name recognition.

Item 3: Please provide the street address of the applicant.

Item 4: Please provide the phone number of the applicant. Please also state the facsimile (fax) number of the applicant, if applicable.

Item 5: Please provide the primary electronic mail (email) address of the applicant. This email address should be the general customer service email that is given to prospective clients who may want to seek answers to specific questions via email.

Item 6: Please provide the website or World Wide Web address that will serve as the applicant’s homepage. This should be the main page of the applicant’s website that prospective clients are initially directed to by the general advertising.

Also, either write the URL in the space provided or attach a screen printout of the webpage where the name of the applicant and all other names under which the applicant does business are listed. If the entire webpage is printed, please highlight the requested information. If the applicant chooses to maintain a website, Utah Code Ann. § 13-42-118(7)(a) requires that the name, and all other names the applicant uses to conduct business be located either directly on the homepage or on a page that is connected to the homepage by a link that is clear and conspicuous.

Also, either write the URL in the space provided or attach a screen printout of the webpage where the principle business address, phone number, and email address are listed. If the entire webpage is printed, please highlight the requested information. If the applicant chooses to maintain a website, Utah Code Ann. § 13-42-118(7)(b) requires that the principle business

address, telephone number, and email address be located either directly on the homepage or on a page that is connected to the homepage by a link that is clear and conspicuous.

Finally, please either write the URL in the space provided or attach a screen printout of the webpage where the names of the principal officers of the applicant are listed. The people that would need to be listed would be the CEO, CFO, CIO, COO or other chief level officers and directors of the applicant. Persons who own at least 10% of the applicant do not need to be listed unless they hold a position listed above that would require them to be listed on the webpage. If the entire webpage is printed, please highlight the requested information. If the applicant chooses to maintain a website, Utah Code Ann. § 13-42-118(7)(c) requires that the names of the principal officers of the applicant be listed on the website, either directly on the homepage or on a page that is connected to the homepage by a link that is clear and conspicuous.

Item 7: Please provide the toll-free phone number the applicant will use for calls placed by clients to its customer service representatives.

Item 8: Please provide the name, mailing address, phone number, facsimile number, if applicable, and e-mail address of the person within the organization the Division of Consumer Protection should contact to handle matters relating to this application and any questions or complaints that may be directed toward the Division of Consumer Protection. This may be the same person who prepares this application.

Item 9: Indicate by checking the appropriate box whether the applicant is claiming tax-exempt status or is organized under IRS code §501(c)(3) or whether the applicant is organized as a for-profit entity.

Item 10: Please indicate whether the applicant will maintain a physical location in the State of Utah. This would include a PO Box or lock box where payments or correspondence are received but would not include the physical presence of the organization's registered agent or other independent service providers.

If applicable, please provide the requested information relating to each physical address located in the State of Utah.

Item 11: Please provide the name, address, phone number, and if applicable, the facsimile number of the registered agent of the applicant. Utah Code Ann. § 13-42-105(2)(e)(i) requires a licensed debt-management services provider to have a registered agent located within the state of Utah.

Item 12: Please provide the street address, city, state, and zip code, along with the phone number of each person who is a director, officer, or chief level employee such as CEO or CFO *and* any individual who has a 10% or greater ownership interest in the applicant. The persons listed in this section may be owners, owner-operators of the organization, or they may be chief level employees who have no ownership stake in the organization whatsoever.

Item 13: Please list the name and dollar amount of compensation paid to the five most highly compensated employees within the organization during each of the last 3 years. These may be employees at any level of the organization who serve in any job function and may include employees whose compensation is based solely on commission. Both the name and dollar amount paid should be present. Optionally, the position of the employee within the organization may be included with the above required information. There should be at least 5 persons who received compensation listed for each of the previous 3 years unless the organization has been in

operation for less than 3 years, in which case each year the organization has been in operation should be covered, or the organization has employed fewer than 5 people, in which case every employee should be listed.

Item 14: For each Director, please provide the address, city and state of each employer, past or present, going back at least 10 years. Optionally, the resumes of each director may be attached to the application, as long as they include an adequate employment history to cover the previous 10 years and the addresses of the employers are listed.

Item 15: Indicate every jurisdiction or state, during the immediately previous 5 years, where:

A. The applicant or any of the applicant's officers or directors are currently or have been registered and/or licensed to provide debt-management education or services.

B. Please list all the states, or countries if outside the United States, where any individual who has received debt-management education or services from the applicant has resided while receiving said services.

Item 16: Please provide the name of any owner, director or person employed by the applicant who has at least a 10% ownership stake in either of the following types of organizations:

A. An affiliate organization of the applicant. An affiliate of the applicant would be a parent company, a subsidiary, or another subsidiary of the same parent company, or any organization that has received more than \$25,000.00, either during this current year or the previous year, from the applicant. Provide the name of the affiliate.

B. Please provide the name and title of the officer, director, or owner and the name of the entity in which they own at least 10% that provides products or services related to the applicant's debt-management services. The purpose of this item is to determine if there is common ownership of a business that provides something critical to the applicant's debt-management services. It would be significant and reportable if a director of the applicant were also a 10% owner of a company that performs credit checks which the applicant used for its clients or the creator of a debt-management or credit repair plan that was offered to clients of the applicant. It would not be a significant or reportable relationship if a director is a shareholder of a company that provides office supplies, signs or other incidental materials as long as the dollar amount purchased in a year does not exceed \$25,000.00.

Item 17: For purposes of this item, an affiliate is defined as an employee of the applicant, a spouse, sibling, sibling of a spouse, a linear ancestor, a linear descendent, the spouse of a linear ancestor or linear descendent, an aunt, uncle, great aunt, great uncle, first cousin, niece, nephew, grandniece, or grandnephew, whether related by whole blood, half blood or adoption, or the spouse of any listed relative, or any person who occupies the residence of an employee.

Item 18: Divide the number of persons listed in Item 17 by the total number of directors of the organization. If this number is **greater than** .25 (25%) check "yes." If the number is **.25 or less**, check "no."

Item 19: The account(s) listed in this item should not retain any money belonging to the applicant and no debts belonging to the applicant should be paid from the monies retained in the listed account(s). The Division of Consumer Protection must be granted access to these accounts at a level that allows the Division to view account balances and transactions and obtain bank statements. The balances and transactions within these accounts will be audited periodically by the Division of Consumer Protection.

A. This should be a listing of the trust accounts maintained by the applicant where money is kept that is received from clients and is intended for the sole purpose of distribution to creditors on behalf of the clients. The bank name, bank address, bank routing number, and account number should be clearly printed in the space provided. All the requested information can be found on a check associated with each bank account. If the space is not sufficient please attach pages as necessary.

B. The name and title of each person who has access to the trust accounts should be listed in the space provided. Access can be either as a signer on one or more of the trust accounts or an individual who will be responsible for performing the required monthly reconciliations. If the space is not sufficient please attach pages as necessary.

Item 20: Please indicate if the applicant's debt-management counselors are paid hourly, by commission or a combination of both. Indicate the salary or hourly wage amount paid and describe any formula used to calculate commissions or bonuses the employees may earn.

Item 21: Please indicate if the applicant itself or any officers, directors, employees or agents of the applicant who are authorized to have access to the required trust accounts have been the subject of any material civil or criminal judgment or litigation or any material administrative enforcement action by a governmental agency in any jurisdiction. Material civil or criminal actions would include charges of theft, fraud, embezzlement, SEC charges or an SEC investigation that is ongoing. Immaterial charges would include traffic violations, divorce or other non-business related civil case. Please include the specifics of the charges, any penalties and the current disposition of the case. Involvement in current or past litigation will not necessarily bar an applicant from approval. The frequency, type, and status of all litigation will be considered when determining acceptance or rejection of an application.

Item 22: Please give a brief description or summary of the three most commonly used debt-management educational programs that are or will be provided to individuals. If fewer than 3 programs are available, please indicate this on the application. Please do not respond "see printed materials" or "see website."

Item 23: Please attach a copy of any budgetary analysis, financial analysis, or other type of credit analysis that will be done on behalf of the customer. This is generally a comparison of income items, expense items, and other monetary items. The budgetary analysis should form the basis for debt-management recommendations and the program provided to the client. The budgetary analysis may be either a blank copy of forms given to a client to fill out or a completed analysis with test data. Please do not provide a printout of data from a specific client without first obtaining written permission from the client and removing or blacking out identifying information such as the client's name and address.

Item 24: If this is a renewal application, or if the company has been providing debt-management services to clients within the state of Utah for the past 12 months, please provide the dollar amount of the sum total of all money received from Utah clients within the last 12 months. Also include the sum total of all money that has been disbursed to creditors of clients who are Utah residents from the previous 12 months. It is not expected that the two numbers will be identical. If this is not a renewal application either leave this item blank or, preferably, indicate on the application that it does not apply at this time.

Item 25: Please review your bank statements for the previous 6 months and locate the single highest daily balance listed on any of these statements. Please indicate this amount in the space provided. If this is not a renewal application either leave this item blank or, preferably, indicate on the application that it does not apply at this time.

Note: If this amount is greater than \$250,000.00 then the applicant will need to increase the amount of the required insurance policy from \$250,000.00 to at least the amount listed here.

Item 26: Please sign and date your application. The application cannot be accepted until it is signed by an authorized individual within the organization. If any information becomes incorrect or incomplete, you must file the complete information or correct your application within **ten (10)** days after the information becomes incorrect or incomplete.

- *Your application is not complete without attaching the required documents. See instructions below for a list of documents that need to be included, appropriate preparation of the documents and preparing specific documents.*

Documents To Attach

Document 1: If the applicant will have any clients execute a power of attorney, a blank copy of this agreement should be submitted.

Document 2: Please attach the requested, audited financial statements, audited by a certified public accountant, for the number of required years required based upon the type of application being filed. If the applicant has not yet commenced business operations, please indicate this information on the application and include pro-forma budgets of expected activity.

Document 3: Please provide a copy of the certificate of accreditation or other documentation indicating that the applicant has been accredited through a program listed under Approved Accreditation Programs and Organizations listed in Appendix A of these instructions.

Document 4: Please provide copies of certification records for each employee furnished by one of the approved independent credit counselor certification programs listed in Appendix A of these instructions. These should be copies of the certificates received by each individual and not a spreadsheet or a report run of all individuals who have completed the certification program.

Document 5: Please provide a listing of the itemized fees and charges that will be required of Utah residents as well as any donations or other forms of compensation the applicant will seek to collect from clients residing in the State of Utah.

Document 6: For every officer, employee, or agent of the applicant who will have access to the trust account(s), please attach a fingerprint card and the results of a background check for each individual listed. Utah Code Ann. § 13-42-106(14) specifically requires the fingerprints and background check, both of which must have been completed within the previous 12 months. The application cannot be considered complete until both the fingerprints and the results of the criminal records check are completed and received by the Division of Consumer Protection. Note: As indicated, the fingerprinting and criminal records check attached to the application must have been completed within the previous 12 months. **If this is a renewal application, the Criminal Records Affidavit, signed and notarized, must be submitted for every officer, employee, or agent of the applicant who is authorized to have access to the trust account(s) identified in item #19 of the application and has submitted fingerprint cards and background checks in a previous application.**

Document 7: Prior to commencing debt-management services in the State of Utah, the applicant must secure a surety bond of at least \$100,00.00 that is payable to the State of Utah and to the clients of the applicant who reside in the State of Utah. Please attach a copy of the surety bond or the appropriate US Government securities that may be used in lieu of a surety bond.

Document 8: **As required by Utah Code Ann. § 13-42-105 (2)(d), any company providing debt-management services to residents of the State of Utah must maintain an insurance policy in the greater amount of either \$250,00.00 or the highest single day balance, within the 6 months previous to this application, of the account(s) where client funds are held in trust. If this is an initial application, attach evidence of insurance in the amount of \$250,000; (i) against the risks of dishonesty, fraud, theft, and other misconduct on the part of the applicant or a director, employee, or agent of the applicant; (ii) issued by an insurance company authorized to do business in the State of Utah and **rated at least A** by a nationally recognized rating organization; (iii) with a deductible not exceeding \$5,000; (iv) payable to the applicant, the clients who have agreements with the applicant, and the State of Utah, as their interests may appear; and (v) not subject to**

cancellation by the applicant without the approval of the Division of Consumer Protection. If this is a renewal application, the insurance must meet these same requirements and must be in an amount equal to the larger of \$250,000 or the highest aggregate daily balance in the required trust account(s) during the six-month period immediately preceding the application.

Document 9: If the applicant is claiming tax-exempt status or is organized under IRS code §501(c)(3), the applicant should attach evidence of its tax-exempt status. This will be a letter from the IRS indicating that the applicant has been approved for tax-exempt status.

Document 10: Please attach a copy of the articles of incorporation, articles of organization, or the document applicable to the specific type of entity that officially organizes the applicant as a legal entity within the state it is legally organized in. The applicant may be legally organized in a state other than Utah.

Document 11: The educational materials used by the applicant. This may include pamphlets, brochures, compact disks, books and booklets, workbooks, magazines, PowerPoint, slide or other computer presentations, audio or video disks, cassettes, or other presentations. Printed materials should be submitted in either original production or a reasonable reproduction. Digital materials can be submitted in either a reasonable printed reproduction or compact disk/DVD format. Audio or video materials may be submitted either in their original format or in a reasonable transcript.

Document 12: Please provide a copy of each form, brochure, pamphlet, agreement, or other document that will be given to a resident of the State of Utah for purposes of forming an agreement between the client and the applicant with the appropriate highlighting and numbering as directed beginning on page 10 of the application:

Agreements with Utah Consumers

1: The agreement between the applicant and prospective clients should contain adequate space to record the name and address of the individual who will be receiving debt-management education or services from the applicant. Please highlight this information on the client agreement and note the page number this information appears on in the space provided.

2: The name, business address, and phone number of the applicant offering debt-management education and services should be printed and clearly visible on the agreement. Please highlight this information on the client agreement and note the page number this information appears on in the space provided.

3: Utah Code Ann. § 13-42-116 requires that debt-management service providers maintain a toll-free phone where they may be reached during normal business hours. This toll-free phone number should be made available to clients of the applicant.

4: On the client agreement there should be an itemized list of the services that either the client may select from or that will be included in the packages the client may select from. The price or the method of determining the price for each of these services should be listed.

A. List of all services the client may elect to receive free of additional charge if the client elects to enter into a debt-management plan at this time.

B. List of the services a client may elect to receive for a fee should the client elect not to participate in a debt-management plan at this time. This list may contain the same items as the above list if a fee is allowable for the service.

C. List of all services the client may elect to receive for which there will be an additional fee even if the client elects to participate in a debt-management plan at this time.

It is important that these fees do not exceed the allowed limits set forth in Utah Code Ann. § 13-42-123(4) and (6). The allowed limits may be adjusted in the future by the Division of Consumer Protection. Please highlight this information on the client agreement and note the page number this information appears on in the space provided.

5: From among the items and services the applicant offers, the client agreement should list:

A. the services the client has elected to receive; and

B. a listing of applicable fees and charges for the itemized services or the method of determining the amount of the charge, plainly visible and available for customer review.

It is important that these fees do not exceed the allowed limits set forth in Utah Code Ann. § 13-42-123(4) and (6). The allowed limits may be adjusted in the future by the Division of Consumer Protection. Please highlight this information on the client agreement and note the page number this information appears on in the space provided.

6: The client agreement or financial analysis given to the client with or prior to the client agreement should disclose to the client the following information regarding each payment to be made by the client:

A. the amount of each payment to be made or the amount that will be electronically withdrawn from the bank account of the client. This amount should consist of the sum of money that will be paid to the client's creditors and any fees that will be paid to the applicant, such as monthly fees;

B. the date on which the payment will be due or on which the funds will be withdrawn. If the plan calls for bimonthly or weekly payments or withdrawals all dates will need to be listed; and

C. an estimated date on which the final payment will be due from the client or on which the final payment will be withdrawn from the client's bank account.

Please highlight this information on the client agreement and note the page number this information appears on in the space provided.

7: This should be a listing of all creditors the client is known to have and the list should be grouped according to the following criteria:

A. The first listing of creditors should include those the applicant believes will grant concessions to the client. These concessions may include reductions in interest rates or the waiving of late fees and penalties.

B. The second group of creditors listed should be those that the applicant will direct payment to on behalf of the client but that will not grant any concessions to the client.

C. The third group listed should be those creditors the client has that the applicant believes will not participate in the plan at all and that will not receive payments from the applicant but will still need to be paid directly by the client.

D. The final group listed should be any other creditors the client has that do not fit into any of the groups described above.

Please highlight this information on the client agreement and note the page number this information appears on in the space provided.

8: Upon the client agreement, or in a separate record that the client may keep, there should be a section clearly explaining how frequently the client will receive account statements as well as the client's right to request additional statements. Utah Code Ann. § 13-42-127 currently requires a **monthly** account statement to be sent to each active client as well as a statement to be sent within 5 business days of the request of a statement, as long as no more than 1 additional statement is requested within the month. Additional account statements are required to be provided upon the occurrence of special events, such as the termination of a client agreement. Please see Utah Code Ann. § 13-42-127 for additional information on when account statements may be required of the applicant. Please highlight this information on the client agreement and note the page number this information appears on in the space provided.

9: If at any time before or during the course of a debt-management plan a creditor withdraws, the applicant is required to notify the client. At this time the client may elect to modify or terminate the debt-management plan. The applicant is required to notify the client of this legal right. Please highlight this information on the client agreement and note the page number this information appears on in the space provided.

10: The client agreement should contain a statement from the applicant to the client acknowledging that the Division of Consumer Protection may audit any of the trust accounts or any of the records associated with the trust accounts that the applicant has established and that the client agrees to permit the disclosure of the information necessary to conduct these audits. Please highlight this information on the client agreement and note the page number this information appears on in the space provided.

11: The applicant will have the right, under Utah Code Ann. § 13-42-119(1)(f)(vii), to terminate an agreement with a client at anytime for good cause. This information is required to be disclosed to a prospective client. There are additional reasons that the applicant may terminate the agreement with a client, such as non-payment, that the applicant may wish to disclose to the prospective client at this time, in conjunction with this item. If at any time the applicant elects to terminate a plan with a client, any money that has not been paid to the client's creditors must be returned to the client, except money received for the payment of fees. Please highlight this information on the client agreement and note the page number this information appears on in the space provided.

12: As indicated, under Utah Code Ann. § 13-42-120, a client may terminate the agreement with the applicant at anytime within 3 business days of the day after assenting to the agreement by informing the applicant by either email, mail, or delivery of a notice to cancel. Utah Code Ann. § 13-42-120 contains recommended wording. If the wording in the client agreement is not

substantially similar to the wording in Utah Code Ann. § 13-42-120, then the client will have 30 days to cancel the agreement. Please highlight this information on the client agreement and note the page number this information appears on in the space provided.

13: Please provide, somewhere on the client agreement, a clear statement indicating that a client or prospective client living in Utah may contact the Division of Consumer Protection with any questions or concerns about the applicant. Please highlight this information on the client agreement and note the page number this information appears on in the space provided.

14: Please list, somewhere on the client agreement, the current contact information for the Utah Division of Consumer Protection, including name, address, phone number, and website. This information is available on the front of the application or on the Division's current website: <http://www.dcp.utah.gov>. Please highlight this information on the client agreement and note the page number this information appears on in the space provided.

15: This should explain that a client has the right to terminate the agreement at any time for any reason by giving the provider written or electronic notice. The provider will refund all unexpended money to the client and any powers of attorney will be void. If the agreement contemplates that creditors will settle debts for less than the principal amount of debt, the provider will refund 65% of any portion of the setup fee that has not been credited against the settlement fee. Please highlight this information on the client agreement and note the page number this information appears on in the space provided.

Note: A client may waive this right if a situation necessitates, such as the need for an immediate disbursement of funds. The client must waive this right explicitly by delivering a document of their making to the applicant. Use of a form letter provided by the applicant is not valid.

16: Prior to allowing a prospective client to assent to a debt-management service, the applicant is required under Utah Code Ann. § 13-42-117(4) to inform the prospective client of other options, including bankruptcy, and that participation in a debt-management plan may have adverse effects on a client's personal credit rating. The required wording will vary based on the type of debt-management program being provided. Required wording types are listed in Utah Code Ann. §13-42-117(5), (6), or (7). The statement should be on a separate page and surrounded by black lines. The page should also contain the name and business address of the applicant. Only the information required by this item should be on the page that contains this information.

Applicant (Company) Name_____

Utah Permit Number_____

Instructions:

Your application cannot be processed until the criminal records affidavit or fingerprint card and background check has been received for each officer, employee, or agent who has access to the trust account.

If you have submitted fingerprint cards and background checks in a previous application, you do not need to submit them again. Instead, submit the following affidavit from each officer, employee, or agent with access to the trust account verifying that the information previously submitted has not changed.

CRIMINAL RECORDS AFFIDAVIT

State of _____)
) SS.
County of _____)

I, the undersigned being duly sworn state that I have not been convicted of a crime or suffered a civil judgment, involving dishonesty or the violation of any state or federal laws.

Signature of Affiant

Print Name of Affiant

Title

Subscribed and sworn to before me this _____ of _____, 20 _____

Notary Public

SEAL

My commission expires _____

Appendix A: Approved Accreditation Programs and Organizations

The Uniform Debt-Management Services act requires that an applicant for registration provide evidence of accreditation by an independent accrediting organization approved by the Division of Consumer Protection. Utah Code Ann. § 13-42-106(80).

The following programs or organizations have been approved by the Division of Consumer Protection to meet the accreditation requirement of the Utah Code Ann. § 13-42-106(80):

- Council on Accreditation – Financial Management and Debt Counseling Accreditation Standards www.coanet.org
- ISO 9001:2000 Standard www.iso.org
- BSI: ISO 9001:2000, USOBA Standard and TASC Standard www.bsiamerica.com

Approved Credit Counselor and Debt Specialist Certification Programs and Organizations

The Uniform Debt-Management act requires that an applicant for registration provide evidence that, within 12 months after initial employment, each of the applicant’s counselors become certified as a certified credit counselor. Utah Code Ann. §13-42-106(9). A certified credit counselor means “an individual certified by a training program or certifying organization, approved by the administrator, that authenticates the competence of individuals providing education and assistance to other individuals providing education and assistance to other individuals in connection with debt-management services.”—Utah Code Ann. § 13-42-102(6).

The following programs or organizations have been approved by the Division of Consumer Protection to meet the certification requirement of Utah Code Ann. § 13-42-106(9):

- Association for Financial Counseling and Planning Education (AFCPE) : Accredited Financial Counselor and Certified Housing Counselor programs www.afcpe.org
- Center for Financial Certifications: Certified Personal Finance Counselor and Certified Consumer Debt Specialist programs www.fincert.org
- National Association of Certified Credit Counselors (NACCC): Credit Counselor Certification and Debt Specialist Certification programs www.naaac.us
- National Foundation for Credit Counseling (NFCC): Certified Counselor program www.nfcc.org

- The National Institute for Financial Education of America (NIFE): Certified Counselor program www.nife-ed.com
- International Association of Professional Debt Arbitrators (IAPDA): Debt Specialist program www.iapda.org
- Arbor Investment in Financial Education: Certified Credit Counselor program www.arbored.com

Appendix B

13-42-101. Title.

This chapter shall be known as the "Uniform Debt-Management Services Act."

13-42-102. Definitions.

In this chapter:

(1) "Administrator" means the Division of Consumer Protection.

(2) "Affiliate":

(a) with respect to an individual, means:

(i) the spouse of the individual;

(ii) a sibling of the individual or the spouse of a sibling;

(iii) an individual or the spouse of an individual who is a lineal ancestor or lineal descendant of the individual or the individual's spouse;

(iv) an aunt, uncle, great aunt, great uncle, first cousin, niece, nephew, grandniece, or grandnephew, whether related by the whole or the half blood or adoption, or the spouse of any of them; or

(v) any other individual occupying the residence of the individual; and

(b) with respect to an entity, means:

(i) a person that directly or indirectly controls, is controlled by, or is under common control with the entity;

(ii) an officer of, or an individual performing similar functions with respect to, the entity;

(iii) a director of, or an individual performing similar functions with respect to, the entity;

(iv) subject to adjustment of the dollar amount pursuant to Subsection 13-42-132(6), a person that receives or received more than \$25,000 from the entity in either the current year or the preceding year or a person that owns more than 10% of, or an individual who is employed by or is a director of, a person that receives or received more than \$25,000 from the entity in either the current year or the preceding year;

(v) an officer or director of, or an individual performing similar functions with respect to, a person described in Subsection (2)(b)(i);

(vi) the spouse of, or an individual occupying the residence of, an individual described in Subsections (2)(b)(i) through (v); or

(vii) an individual who has the relationship specified in Subsection (2)(a)(iv) to an individual or the spouse of an individual described in Subsections (2)(b)(i) through (v).

(3) "Agreement" means an agreement between a provider and an individual for the performance of debt-management services.

(4) "Bank" means a financial institution, including a commercial bank, savings bank, savings and loan association, credit union, and trust company, engaged in the business of banking, chartered under federal or state law, and regulated by a federal or state banking regulatory authority.

(5) "Business address" means the physical location of a business, including the name and number of a street.

(6) "Certified counselor" means an individual certified by a training program or certifying organization, approved by the administrator, that authenticates the competence of individuals providing education and assistance to other individuals in connection with debt-management services.

(7) "Concessions" means assent to repayment of a debt on terms more favorable to an individual than the terms of the contract between the individual and a creditor.

(8) "Day" means calendar day.

(9) "Debt-management services" means services as an intermediary between an individual and one or more creditors of the individual for the purpose of obtaining concessions, but does not

include:

- (a) legal services provided in an attorney-client relationship by an attorney licensed or otherwise authorized to practice law in this state;
- (b) accounting services provided in an accountant-client relationship by a certified public accountant licensed to provide accounting services in this state; or
- (c) financial-planning services provided in a financial planner-client relationship by a member of a financial-planning profession whose members the administrator, by rule, determines are:
 - (i) licensed by this state;
 - (ii) subject to a disciplinary mechanism;
 - (iii) subject to a code of professional responsibility; and
 - (iv) subject to a continuing education requirement.
- (10) "Entity" means a person other than an individual.
- (11) "Good faith" means honesty in fact and the observance of reasonable standards of fair dealing.
- (12) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, or any other legal or commercial entity. The term does not include a public corporation, government, or governmental subdivision, agency, or instrumentality.
- (13) "Plan" means a program or strategy in which a provider furnishes debt-management services to an individual and which includes a schedule of payments to be made by or on behalf of the individual and used to pay debts owed by the individual.
- (14) "Principal amount of the debt" means the amount of a debt at the time of an agreement.
- (15) "Provider" means a person that provides, offers to provide, or agrees to provide debt-management services directly or through others.
- (16) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
- (17) "Settlement fee" means a charge imposed on or paid by an individual in connection with a creditor's assent to accept in full satisfaction of a debt an amount less than the principal amount of the debt.
- (18) "Sign" means, with present intent to authenticate or adopt a record:
 - (a) to execute or adopt a tangible symbol; or
 - (b) to attach to or logically associate with the record an electronic sound, symbol, or process.
- (19) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.
- (20) "Trust account" means an account held by a provider that is:
 - (a) established in an insured bank;
 - (b) separate from other accounts of the provider or its designee;
 - (c) designated as a trust account or other account designated to indicate that the money in the account is not the money of the provider or its designee; and
 - (d) used to hold money of one or more individuals for disbursement to creditors of the individuals.

13-42-103. Exempt agreements and persons.

- (1) This chapter does not apply to an agreement with an individual who the provider has no reason to know resides in this state at the time of the agreement.
- (2) This chapter does not apply to a provider to the extent that the provider:
 - (a) provides or agrees to provide debt-management, educational, or counseling services to an individual who the provider has no reason to know resides in this state at the time the provider agrees to provide the services; or

(b) receives no compensation for debt-management services from or on behalf of the individuals to whom it provides the services or from their creditors.

(3) This chapter does not apply to the following persons or their employees when the person or the employee is engaged in the regular course of the person's business or profession:

(a) a judicial officer, a person acting under an order of a court or an administrative agency, or an assignee for the benefit of creditors;

(b) a bank;

(c) an affiliate, as defined in Subsection 13-42-102(2)(b)(i), of a bank if the affiliate is regulated by a federal or state banking regulatory authority; or

(d) a title insurer, escrow company, or other person that provides bill-paying services if the provision of debt-management services is incidental to the bill-paying services.

13-42-104. Registration required.

(1) Except as otherwise provided in Subsection (2), a provider may not provide debt-management services to an individual who it reasonably should know resides in this state at the time it agrees to provide the services, unless the provider is registered under this chapter.

(2) If a provider is registered under this chapter, Subsection (1) does not apply to an employee or agent of the provider.

(3) The administrator shall maintain and publicize a list of the names of all registered providers.

13-42-105. Application for registration -- Form, fee, and accompanying documents.

(1) An application for registration as a provider must be in a form prescribed by the administrator.

(2) Subject to adjustment of dollar amounts pursuant to Subsection 13-42-132(6), an application for registration as a provider must be accompanied by:

(a) the fee established by the administrator in accordance with Section 63-38-3.2;

(b) the bond required by Section 13-42-113;

(c) identification of all trust accounts required by Section 13-42-122 and an irrevocable consent authorizing the administrator to review and examine the trust accounts;

(d) evidence of insurance in the amount of \$250,000:

(i) against the risks of dishonesty, fraud, theft, and other misconduct on the part of the applicant or a director, employee, or agent of the applicant;

(ii) issued by an insurance company authorized to do business in this state and rated at least A by a nationally recognized rating organization;

(iii) with no deductible;

(iv) payable to the applicant, the individuals who have agreements with the applicant, and this state, as their interests may appear; and

(v) not subject to cancellation by the applicant without the approval of the administrator;

(e) a record consenting to the jurisdiction of this state containing:

(i) the name, business address, and other contact information of its registered agent in this state for purposes of service of process; or

(ii) the appointment of the administrator as agent of the provider for purposes of service of process; and

(f) if the applicant is organized as a not-for-profit entity or is exempt from taxation, evidence of not-for-profit and tax-exempt status applicable to the applicant under the Internal Revenue Code, 26 U.S.C. Section 501.

13-42-106. Application for registration -- Required information.

An application for registration must be signed under penalty of perjury and include:

- (1) the applicant's name, principal business address and telephone number, and all other business addresses in this state, electronic-mail addresses, and Internet website addresses;
- (2) all names under which the applicant conducts business;
- (3) the address of each location in this state at which the applicant will provide debt-management services or a statement that the applicant will have no such location;
- (4) the name and home address of each officer and director of the applicant and each person that owns at least 10% of the applicant;
- (5) identification of every jurisdiction in which, during the five years immediately preceding the application:
 - (a) the applicant or any of its officers or directors has been licensed or registered to provide debt-management services; or
 - (b) individuals have resided when they received debt-management services from the applicant;
- (6) a statement describing, to the extent it is known or should be known by the applicant, any material civil or criminal judgment or litigation and any material administrative or enforcement action by a governmental agency in any jurisdiction against the applicant, any of its officers, directors, owners, or agents, or any person who is authorized to have access to the trust account required by Section 13-42-122;
- (7) the applicant's financial statements, audited by an accountant licensed to conduct audits, for each of the two years immediately preceding the application or, if it has not been in operation for the two years preceding the application, for the period of its existence;
- (8) evidence of accreditation by an independent accrediting organization approved by the administrator;
- (9) evidence that, within 12 months after initial employment, each of the applicant's counselors becomes certified as a certified counselor;
- (10) a description of the three most commonly used educational programs that the applicant provides or intends to provide to individuals who reside in this state and a copy of any materials used or to be used in those programs;
- (11) a description of the applicant's financial analysis and initial budget plan, including any form or electronic model, used to evaluate the financial condition of individuals;
- (12) a copy of each form of agreement that the applicant will use with individuals who reside in this state;
- (13) the schedule of fees and charges that the applicant will use with individuals who reside in this state;
- (14) at the applicant's expense, the results of a criminal records check, including fingerprints, conducted within the immediately preceding 12 months, covering every officer of the applicant and every employee or agent of the applicant who is authorized to have access to the trust account required by Section 13-42-122;
- (15) the names and addresses of all employers of each director during the ten years immediately preceding the application;
- (16) a description of any ownership interest of at least 10% by a director, owner, or employee of the applicant in:
 - (a) any affiliate of the applicant; or
 - (b) any entity that provides products or services to the applicant or any individual relating to the applicant's debt-management services;
- (17) a statement of the amount of compensation of the applicant's five most highly compensated employees for each of the three years immediately preceding the application or, if it has not been in operation for the three years preceding the application, for the period of its existence;
- (18) the identity of each director who is an affiliate, as defined in Subsection 13-42-102(2)(a) or (2)(b)(i), (ii), (iv), (v), (vi), or (vii), of the applicant; and

(19) any other information that the administrator reasonably requires to perform the administrator's duties under Section 13-42-109.

13-42-107. Application for registration -- Obligation to update information.

An applicant or registered provider shall notify the administrator within ten days after a change in the information specified in Subsection 13-42-105(2)(d) or (f) or Subsection 13-42-106(1), (3), (6), (12), or (13).

13-42-108. Application for registration -- Public information.

Except for the information required by Subsections 13-42-106 (7), (14), and (17) and the addresses required by Subsection 13-42-106(4), the administrator shall make the information in an application for registration as a provider available to the public.

13-42-109. Certification of registration -- Issuance or denial.

(1) Except as otherwise provided in Subsections (2) and (3), the administrator shall issue a certificate of registration as a provider to a person that complies with Sections 13-42-105 and 13-42-106.

(2) The administrator may deny registration if:

- (a) the application contains information that is materially erroneous or incomplete;
- (b) an officer, director, or owner of the applicant has been convicted of a crime, or suffered a civil judgment, involving dishonesty or the violation of state or federal securities laws;
- (c) the applicant or any of its officers, directors, or owners has defaulted in the payment of money collected for others; or
- (d) the administrator finds that the financial responsibility, experience, character, or general fitness of the applicant or its owners, directors, employees, or agents does not warrant belief that the business will be operated in compliance with this chapter.

(3) The administrator shall deny registration if:

- (a) the application is not accompanied by the fee established by the administrator in accordance with Section 63-38-3.2; or
 - (b) with respect to an applicant that is organized as a not-for-profit entity or has obtained tax-exempt status under the Internal Revenue Code, 26 U.S.C. Section 501, the applicant's board of directors is not independent of the applicant's employees and agents.
- (4) Subject to adjustment of the dollar amount pursuant to Subsection 13-42-132(6), a board of directors is not independent for purposes of Subsection (3) if more than one-fourth of its members:
- (a) are affiliates of the applicant, as defined in Subsection 13-42-102(2)(a) or 13-42-102(2)(b)(i), (ii), (iv), (v), (vi), or (vii); or
 - (b) after the date ten years before first becoming a director of the applicant, were employed by or directors of a person that received from the applicant more than \$25,000 in either the current year or the preceding year.

13-42-110. Certificate of registration -- Timing.

(1) The administrator shall approve or deny an initial registration as a provider within 120 days after an application is filed. In connection with a request pursuant to Subsection 13-42-106(19) for additional information, the administrator may extend the 120-day period for not more than 60 days. Within seven days after denying an application, the administrator, in a record, shall inform the applicant of the reasons for the denial.

(2) If the administrator denies an application for registration as a provider or does not act on an application within the time prescribed in Subsection (1), the applicant may appeal and request a hearing pursuant to Title 63, Chapter 46b, Administrative Procedures Act.

(3) Subject to Subsection 13-42-111(4) and Section 13-42-134, a registration as a provider is valid for one year.

13-42-111. Renewal of registration.

(1) A provider must obtain a renewal of its registration annually.

(2) An application for renewal of registration as a provider must be in a form prescribed by the administrator, signed under penalty of perjury, and:

(a) be filed no fewer than 30 and no more than 60 days before the registration expires;

(b) be accompanied by the fee established by the administrator in accordance with Section 63-38-3.2 and the bond required by Section 13-42-113;

(c) contain the matter required for initial registration as a provider by Subsections 13-42-106(8) and (9) and a financial statement, audited by an accountant licensed to conduct audits, for the applicant's fiscal year immediately preceding the application;

(d) disclose any changes in the information contained in the applicant's application for registration or its immediately previous application for renewal, as applicable;

(e) supply evidence of insurance in an amount equal to the larger of \$250,000 or the highest daily balance in the trust account required by Section 13-42-122 during the six-month period immediately preceding the application:

(i) against risks of dishonesty, fraud, theft, and other misconduct on the part of the applicant or a director, employee, or agent of the applicant;

(ii) issued by an insurance company authorized to do business in this state and rated at least A by a nationally recognized rating organization;

(iii) with no deductible;

(iv) payable to the applicant, the individuals who have agreements with the applicant, and this state, as their interests may appear; and

(v) not subject to cancellation by the applicant without the approval of the administrator;

(f) disclose the total amount of money received by the applicant pursuant to plans during the preceding 12 months from or on behalf of individuals who reside in this state and the total amount of money distributed to creditors of those individuals during that period;

(g) disclose, to the best of the applicant's knowledge, the gross amount of money accumulated during the preceding 12 months pursuant to plans by or on behalf of individuals who reside in this state and with whom the applicant has agreements; and

(h) provide any other information that the administrator reasonably requires to perform the administrator's duties under this section.

(3) Except for the information required by Subsections 13-42-106(7), (14), and (17) and the addresses required by Subsection 13-42-106(4), the administrator shall make the information in an application for renewal of registration as a provider available to the public.

(4) If a registered provider files a timely and complete application for renewal of registration, the registration remains effective until the administrator, in a record, notifies the applicant of a denial and states the reasons for the denial.

(5) If the administrator denies an application for renewal of registration as a provider, the applicant, within 30 days after receiving notice of the denial, may appeal and request a hearing pursuant to Title 63, Chapter 46b, Administrative Procedures Act. Subject to Section 13-42-134, while the appeal is pending the applicant shall continue to provide debt-management services to individuals with whom it has agreements. If the denial is affirmed, subject to the administrator's order and Section 13-42-134, the applicant shall continue to provide debt-management services to individuals with whom it has agreements until, with the approval of the administrator, it transfers the agreements to another registered provider or returns to the individuals all

13-42-112. Registration in another state -- Rulemaking.

(1) (a) Subject to rules made by the administrator, if a provider holds a license or certificate of registration in another state authorizing it to provide debt-management services, the provider may submit a copy of that license or certificate and the application for it instead of an application in the form prescribed by Subsection 13-42-105(1), Section 13-42-106, or Subsection 13-42-111(2).

(b) The administrator shall accept the application and the license or certificate from the other state as an application for registration as a provider or for renewal of registration as a provider, as appropriate, in this state if:

(i) the application in the other state contains information substantially similar to or more comprehensive than that required in an application submitted in this state;

(ii) the applicant provides the information required by Subsections 13-42-106(1), (3), (10), (12), and (13);

(iii) the applicant, under penalty of perjury, certifies that the information contained in the application is current or, to the extent it is not current, supplements the application to make the information current; and

(iv) the applicant files a surety bond or substitute in accordance with Section 13-42-113 or 13-42-114 that is solely payable or available to this state and to individuals who reside in this state.

(2) The administrator, in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, shall make rules designating the states in which a provider may have a license or certificate that may be submitted to the administrator in compliance with this section.

13-42-113. Bond required.

(1) Except as otherwise provided in Section 13-42-114, a provider that is required to be registered under this chapter shall file a surety bond with the administrator, which must:

(a) be in effect during the period of registration and for two years after the provider ceases providing debt-management services to individuals in this state; and

(b) run to this state for the benefit of this state and of individuals who reside in this state when they agree to receive debt-management services from the provider, as their interests may appear.

(2) Subject to adjustment of the dollar amount pursuant to Subsection 13-42-132(6), a surety bond filed pursuant to Subsection (1) must:

(a) be in the amount of \$100,000;

(b) be issued by a bonding, surety, or insurance company authorized to do business in this state and rated at least A by a nationally recognized rating organization; and

(c) have payment conditioned upon noncompliance of the provider or its agent with this chapter.

(3) If the principal amount of a surety bond is reduced by payment of a claim or a judgment, the provider shall immediately notify the administrator and, within 30 days after notice by the administrator, file a new or additional surety bond in an amount to comply with the \$100,000 requirement. If for any reason a surety terminates a bond, the provider shall immediately file a new surety bond in the amount of \$100,000.

(4) The administrator or an individual may obtain satisfaction out of the surety bond procured pursuant to this section if:

(a) the administrator assesses expenses under Subsection 13-42-132(2)(a), issues a final order under Subsection 13-42-133(1)(b), or recovers a final judgment under Subsection 13-42-133(1)(d) or (e) or Subsection 13-42-133(4); or

(b) an individual recovers a final judgment pursuant to Subsection 13-42-135(1), Subsection 13-42-135(2), or Subsection 13-42-135(3)(a), (b), or (d).

(5) If claims against a surety bond exceed or are reasonably expected to exceed the amount of the bond, the administrator, on the initiative of the administrator or on petition of the surety, shall, unless the proceeds are adequate to pay all costs, judgments, and claims, distribute the proceeds in the following order:

(a) to satisfaction of a final order or judgment under Subsection 13-42-133(1)(a), (d), or (e) or Subsection 13-42-133(4);

(b) to final judgments recovered by individuals pursuant to Subsection 13-42-135(1), Subsection 13-42-135(2), or Subsection 13-42-135(3)(a), (b) or (d), pro rata;

(c) to claims of individuals established to the satisfaction of the administrator, pro rata; and

(d) if a final order or judgment is issued under Subsection 13-42-133(1), to the expenses charged pursuant to Subsection 13-42-132(2)(a).

13-42-114. Bond required -- Substitute.

(1) Instead of the surety bond required by Section 13-42-113, a provider may deliver to the administrator, in the amount required by Subsection 13-42-113(2), and, except as otherwise provided in Subsection (1)(c)(i), payable or available to this state and to individuals who reside in this state when they agree to receive debt-management services from the provider, as their interests may appear, if the provider or its agent does not comply with this chapter:

(a) a certificate of insurance issued by an insurance company authorized to do business in this state and rated at least A by a nationally recognized rating organization, with no deductible;

(b) a certificate of deposit issued or confirmed by a bank approved by the administrator, payable upon presentation of a certificate by the administrator stating that the provider or its agent has not complied with this chapter; or

(c) with the approval of the administrator:

(i) an irrevocable letter of credit, issued or confirmed by a bank approved by the administrator, payable upon presentation of a certificate by the administrator stating that the provider or its agent has not complied with this chapter; or

(ii) bonds or other obligations of the United States or guaranteed by the United States or bonds or other obligations of this state or a political subdivision of this state, to be deposited and maintained with a bank approved by the administrator for this purpose.

(2) If a provider furnishes a substitute pursuant to Subsection (1), the provisions of Subsections 13-42-113(1), (3), (4), and (5) apply to the substitute.

13-42-115. Requirement of good faith.

A provider shall act in good faith in all matters under this chapter.

13-42-116. Customer service.

A provider that is required to be registered under this chapter shall maintain a toll-free communication system, staffed at a level that reasonably permits an individual to speak to a certified counselor or customer service representative, as appropriate, during ordinary business hours.

13-42-117. Prerequisites for providing debt-management services.

(1) Before providing debt-management services, a registered provider shall give the individual an itemized list of goods and services and the charges for each. The list must be clear and conspicuous, be in a record the individual may keep whether or not the individual assents to an agreement, and describe the goods and services the provider offers:

(a) free of additional charge if the individual enters into an agreement;

(b) for a charge if the individual does not enter into an agreement; and

(c) for a charge if the individual enters into an agreement, using the following terminology, as applicable, and format:

Set-up fee _____
dollar amount of fee

Monthly service fee _____
dollar amount of fee or method of determining amount

Settlement fee _____

dollar amount of fee or method of determining amount

Goods and services in addition to those provided in connection with a plan:

(item) dollar amount or method of determining amount

(item) dollar amount or method of determining amount.

(2) A provider may not furnish debt-management services unless the provider, through the services of a certified counselor:

(a) provides the individual with reasonable education about the management of personal finance;

(b) has prepared a financial analysis; and

(c) if the individual is to make regular, periodic payments:

(i) has prepared a plan for the individual;

(ii) has made a determination, based on the provider's analysis of the information provided by the individual and otherwise available to it, that the plan is suitable for the individual and the individual will be able to meet the payment obligations under the plan; and

(iii) believes that each creditor of the individual listed as a participating creditor in the plan will accept payment of the individual's debts as provided in the plan.

(3) Before an individual assents to an agreement to engage in a plan, a provider shall:

(a) provide the individual with a copy of the analysis and plan required by Subsection (2) in a record that identifies the provider and that the individual may keep whether or not the individual assents to the agreement;

(b) inform the individual of the availability, at the individual's option, of assistance by a toll-free communication system or in person to discuss the financial analysis and plan required by Subsection (2); and

(c) with respect to all creditors identified by the individual or otherwise known by the provider to be creditors of the individual, provide the individual with a list of:

(i) creditors that the provider expects to participate in the plan and grant concessions;

(ii) creditors that the provider expects to participate in the plan but not grant concessions;

(iii) creditors that the provider expects not to participate in the plan; and

(iv) all other creditors.

(4) Before an individual assents to an agreement to engage in a plan, the provider shall inform the individual, in a record that contains nothing else, that is given separately, and that the individual may keep whether or not the individual assents to the agreement:

(a) of the name and business address of the provider;

(b) that plans are not suitable for all individuals and the individual may ask the provider about other ways, including bankruptcy, to deal with indebtedness;

(c) that establishment of a plan may adversely affect the individual's credit rating or credit scores;

(d) that nonpayment of debt may lead creditors to increase finance and other charges or undertake collection activity, including litigation;

(e) unless it is not true, that the provider may receive compensation from the creditors of the individual; and

(f) that, unless the individual is insolvent, if a creditor settles for less than the full amount of the debt, the plan may result in the creation of taxable income to the individual, even though the individual does not receive any money.

(5) If a provider may receive payments from an individual's creditors and the plan contemplates that the individual's creditors will reduce finance charges or fees for late payment,

default, or delinquency, the provider may comply with Subsection (4) by providing the following disclosure, surrounded by black lines:

IMPORTANT INFORMATION FOR YOU TO CONSIDER

- (1) Debt-management plans are not right for all individuals, and you may ask us to provide information about other ways, including bankruptcy, to deal with your debts.
 - (2) Using a debt-management plan may hurt your credit rating or credit scores.
 - (3) We may receive compensation for our services from your creditors.
-

Name and business address of provider

(6) If a provider will not receive payments from an individual's creditors and the plan contemplates that the individual's creditors will reduce finance charges or fees for late payment, default, or delinquency, a provider may comply with Subsection (4) by providing the following disclosure, surrounded by black lines:

IMPORTANT INFORMATION FOR YOU TO CONSIDER

- (1) Debt-management plans are not right for all individuals, and you may ask us to provide information about other ways, including bankruptcy, to deal with your debts.
 - (2) Using a debt-management plan may hurt your credit rating or credit scores.
-

Name and business address of provider

(7) If a plan contemplates that creditors will settle debts for less than the full principal amount of debt owed, a provider may comply with Subsection (4) by providing the following disclosure, surrounded by black lines:

IMPORTANT INFORMATION FOR YOU TO CONSIDER

- (1) Our program is not right for all individuals, and you may ask us to provide information about bankruptcy and other ways to deal with your debts.
 - (2) Nonpayment of your debts under our program may
hurt your credit rating or credit scores;
lead your creditors to increase finance and other charges; and

lead your creditors to undertake activity, including lawsuits, to collect the debts.
 - (3) Reduction of debt under our program may result in taxable income to you, even though you will not actually receive any money.
-

Name and business address of provider

13-42-118. Communication by electronic or other means.

- (1) In this section:
 - (a) "Consumer" means an individual who seeks or obtains goods or services that are used primarily for personal, family, or household purposes.
 - (b) "Federal act" means the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq.

(2) A provider may satisfy the requirements of Section 13-42-117, 13-42-119, or 13-42-127 by means of the Internet or other electronic means if the provider obtains a consumer's consent in the manner provided by Section 101(c)(1) of the federal act.

(3) The disclosures and materials required by Sections 13-42-117, 13-42-119, and 13-42-127 shall be presented in a form that is capable of being accurately reproduced for later reference.

(4) With respect to disclosure by means of an Internet website, the disclosure of the information required by Subsection 13-42-117(4) must appear on one or more screens that:

(a) contain no other information; and

(b) the individual must see before proceeding to assent to formation of a plan.

(5) At the time of providing the materials and agreement required by Subsections 13-42-117(3) and (4), Section 13-42-119, and Section 13-42-127, a provider shall inform the individual that upon electronic, telephonic, or written request, it will send the individual a written copy of the materials, and shall comply with a request as provided in Subsection (6).

(6) If a provider is requested, before the expiration of 90 days after a plan is completed or terminated, to send a written copy of the materials required by Subsections 13-42-117(3) and (4), Section 13-42-119, or Section 13-42-127, the provider shall send them at no charge within three business days after the request, but the provider need not comply with a request more than once per calendar month or if it reasonably believes the request is made for purposes of harassment. If a request is made more than 90 days after a plan is completed or terminated, the provider shall send within a reasonable time a written copy of the materials requested.

(7) A provider that maintains an Internet website shall disclose on the home page of its website or on a page that is clearly and conspicuously connected to the home page by a link that clearly reveals its contents:

(a) its name and all names under which it does business;

(b) its principal business address, telephone number, and electronic-mail address, if any; and

(c) the names of its principal officers.

(8) Subject to Subsection (9), if a consumer who has consented to electronic communication in the manner provided by Section 101 of the federal act withdraws consent as provided in the federal act, a provider may terminate its agreement with the consumer.

(9) If a provider wishes to terminate an agreement with a consumer pursuant to Subsection (8), it shall notify the consumer that it will terminate the agreement unless the consumer, within 30 days after receiving the notification, consents to electronic communication in the manner provided in Section 101(c) of the federal act. If the consumer consents, the provider may terminate the agreement only as permitted by Subsection 13-42-119(1)(f)(vii).

13-42-119. Form and contents of agreement.

(1) An agreement must:

(a) be in a record;

(b) be dated and signed by the provider and the individual;

(c) include the name of the individual and the address where the individual resides;

(d) include the name, business address, and telephone number of the provider;

(e) be delivered to the individual immediately upon formation of the agreement; and

(f) disclose:

(i) the services to be provided;

(ii) the amount, or method of determining the amount, of all fees, individually itemized, to be paid by the individual;

(iii) the schedule of payments to be made by or on behalf of the individual, including the amount of each payment, the date on which each payment is due, and an estimate of the date of the final payment;

(iv) if a plan provides for regular periodic payments to creditors:

- (A) each creditor of the individual to which payment will be made, the amount owed to each creditor, and any concessions the provider reasonably believes each creditor will offer; and
 - (B) the schedule of expected payments to each creditor, including the amount of each payment and the date on which it will be made;
 - (v) each creditor that the provider believes will not participate in the plan and to which the provider will not direct payment;
 - (vi) how the provider will comply with its obligations under Subsection 13-42-127(1);
 - (vii) that the provider may terminate the agreement for good cause, upon return of unexpended money of the individual;
 - (viii) that the individual may cancel the agreement as provided in Section 13-42-120;
 - (ix) that the individual may contact the administrator with any questions or complaints regarding the provider; and
 - (x) the address, telephone number, and Internet address or website of the administrator.
- (2) For purposes of Subsection (1)(e), delivery of an electronic record occurs when it is made available in a format in which the individual may retrieve, save, and print it and the individual is notified that it is available.
- (3) If the administrator supplies the provider with any information required under Subsection (1)(f)(x), the provider may comply with that requirement only by disclosing the information supplied by the administrator.
- (4) An agreement must provide that:
- (a) the individual has a right to terminate the agreement at any time, without penalty or obligation, by giving the provider written or electronic notice, in which event:
 - (i) the provider will refund all unexpended money that the provider or its agent has received from or on behalf of the individual for the reduction or satisfaction of the individual's debt;
 - (ii) with respect to an agreement that contemplates that creditors will settle debts for less than the principal amount of debt, the provider will refund 65% of any portion of the set-up fee that has not been credited against the settlement fee; and
 - (iii) all powers of attorney granted by the individual to the provider are revoked and ineffective;
 - (b) the individual authorizes any bank in which the provider or its agent has established a trust account to disclose to the administrator any financial records relating to the trust account; and
 - (c) the provider will notify the individual within five days after learning of a creditor's decision to reject or withdraw from a plan and that this notice will include:
 - (i) the identity of the creditor; and
 - (ii) the right of the individual to modify or terminate the agreement.
- (5) An agreement may confer on a provider a power of attorney to settle the individual's debt for no more than 50% of the principal amount of the debt. An agreement may not confer a power of attorney to settle a debt for more than 50% of that amount, but may confer a power of attorney to negotiate with creditors of the individual on behalf of the individual. An agreement must provide that the provider will obtain the assent of the individual after a creditor has assented to a settlement for more than 50% of the principal amount of the debt.
- (6) An agreement may not:
- (a) provide for application of the law of any jurisdiction other than the United States and this state;
 - (b) except as permitted by Section 2 of the Federal Arbitration Act, 9 U.S.C. Section 2, or Title 78, Chapter 31a, Utah Uniform Arbitration Act, contain a provision that modifies or limits otherwise available forums or procedural rights, including the right to trial by jury, that are generally available to the individual under law other than this chapter;
 - (c) contain a provision that restricts the individual's remedies under this chapter or law other than this chapter; or
 - (d) contain a provision that:

(i) limits or releases the liability of any person for not performing the agreement or for violating this chapter; or

(ii) indemnifies any person for liability arising under the agreement or this chapter.

(7) All rights and obligations specified in Subsection (4) and Section 13-42-120 exist even if not provided in the agreement. A provision in an agreement which violates Subsection (4), (5), or (6) is void.

13-42-120. Cancellation of agreement -- Waiver.

(1) An individual may cancel an agreement before midnight of the third business day after the individual assents to it, unless the agreement does not comply with Subsection (2) or Section 13-42-119 or Section 13-42-128, in which event the individual may cancel the agreement within 30 days after the individual assents to it. To exercise the right to cancel, the individual must give notice in a record to the provider. Notice by mail is given when mailed.

(2) An agreement must be accompanied by a form that contains in bold-face type, surrounded by bold black lines:

Notice of Right to Cancel

You may cancel this agreement, without any penalty or obligation, at any time before midnight of the third business day that begins the day after you agree to it by electronic communication or by signing it.

To cancel this agreement during this period, send an e-mail to

_____ or mail or deliver a signed, dated copy of this

E-mail address of provider

notice, or any other written notice to _____

Name of provider

at _____ before midnight on _____.

Address of provider

Date

If you cancel this agreement within the 3-day period, we will refund all money you already have paid us.

You also may terminate this agreement at any later time, but we are not required to refund fees you have paid us.

I cancel this agreement,

Print your name

Signature

Date

(3) If a personal financial emergency necessitates the disbursement of an individual's money to one or more of the individual's creditors before the expiration of three days after an agreement is signed, an individual may waive the right to cancel. To waive the right, the individual must send or deliver a signed, dated statement in the individual's own words describing the circumstances that necessitate a waiver. The waiver must explicitly waive the right to cancel. A waiver by means of a standard form record is void.

13-42-121. Required language.

Unless the administrator, by rule, provides otherwise, the disclosures and documents required by this chapter must be in English. If a provider communicates with an individual primarily in a language other than English, the provider must furnish a translation into the other language of the disclosures and documents required by this chapter.

13-42-122. Trust account.

(1) All money paid to a provider by or on behalf of an individual pursuant to a plan for distribution to creditors is held in trust. Within two business days after receipt, the provider shall deposit the money in a trust account established for the benefit of individuals to whom the provider is furnishing debt-management services.

(2) Money held in trust by a provider is not property of the provider or its designee. The money is not available to creditors of the provider or designee, except an individual from whom or on whose behalf the provider received money, to the extent that the money has not been disbursed to creditors of the individual.

(3) A provider shall:

(a) maintain separate records of account for each individual to whom the provider is furnishing debt-management services;

(b) disburse money paid by or on behalf of the individual to creditors of the individual as disclosed in the agreement, except that:

(i) the provider may delay payment to the extent that a payment by the individual is not final; and

(ii) if a plan provides for regular periodic payments to creditors, the disbursement must comply with the due dates established by each creditor; and

(c) promptly correct any payments that are not made or that are misdirected as a result of an error by the provider or other person in control of the trust account and reimburse the individual for any costs or fees imposed by a creditor as a result of the failure to pay or misdirection.

(4) A provider may not commingle money in a trust account established for the benefit of individuals to whom the provider is furnishing debt-management services with money of other persons.

(5) A trust account must at all times have a cash balance equal to the sum of the balances of each individual's account.

(6) If a provider has established a trust account pursuant to Subsection (1), the provider shall reconcile the trust account at least once a month. The reconciliation must compare the cash balance in the trust account with the sum of the balances in each individual's account. If the provider or its designee has more than one trust account, each trust account must be individually reconciled.

(7) If a provider discovers, or has a reasonable suspicion of, embezzlement or other unlawful appropriation of money held in trust, the provider immediately shall notify the administrator by a method approved by the administrator. Unless the administrator by rule provides otherwise, within five days thereafter, the provider shall give notice to the administrator describing the remedial action taken or to be taken.

(8) If an individual terminates an agreement or it becomes reasonably apparent to a provider that a plan has failed, the provider shall promptly refund to the individual all money paid by or on behalf of the individual which has not been paid to creditors, less fees that are payable to the provider under Section 13-42-123.

(9) Before relocating a trust account from one bank to another, a provider shall inform the administrator of the name, business address, and telephone number of the new bank. As soon as practicable, the provider shall inform the administrator of the account number of the trust account at the new bank.

13-42-123. Fees and other charges.

(1) A provider may not impose directly or indirectly a fee or other charge on an individual or receive money from or on behalf of an individual for debt-management services except as permitted by this section.

(2) A provider may not impose charges or receive payment for debt-management services until the provider and the individual have signed an agreement that complies with Sections 13-42-119 and 13-42-128.

(3) If an individual assents to an agreement, a provider may not impose a fee or other charge for educational or counseling services, or the like, except as otherwise provided in this Subsection (3) and Subsection 13-42-128(4). The administrator may authorize a provider to charge a fee based on the nature and extent of the educational or counseling services furnished by the provider.

(4) Subject to adjustment of dollar amounts pursuant to Subsection 13-42-132(6), the following rules apply:

(a) If an individual assents to a plan that contemplates that creditors will reduce finance charges or fees for late payment, default, or delinquency, the provider may charge:

(i) a fee not exceeding \$50 for consultation, obtaining a credit report, setting up an account, and the like; and

(ii) a monthly service fee, not to exceed \$10 times the number of creditors remaining in a plan at the time the fee is assessed, but not more than \$50 in any month.

(b) If an individual assents to a plan that contemplates that creditors will settle debts for less than the principal amount of the debt, a provider may charge:

(i) subject to Subsection 13-42-119(4), a fee for consultation, obtaining a credit report, setting up an account, and the like, in an amount not exceeding the lesser of \$400 and 4% of the debt in the plan at the inception of the plan; and

(ii) a monthly service fee, not to exceed \$10 times the number of creditors remaining in a plan at the time the fee is assessed, but not more than \$50 in any month.

(c) A provider may not impose or receive fees under both Subsections (4)(a) and (b).

(d) Except as otherwise provided in Subsection 13-42-128(4), if an individual does not assent to an agreement, a provider may receive for educational and counseling services it provides to the individual a fee not exceeding \$100 or, with the approval of the administrator, a larger fee. The administrator may approve a fee larger than \$100 if the nature and extent of the educational and counseling services warrant the larger fee.

(5) If, before the expiration of 90 days after the completion or termination of educational or counseling services, an individual assents to an agreement, the provider shall refund to the individual any fee paid pursuant to Subsection (4)(d).

(6) Except as otherwise provided in Subsections (3) and (4), if a plan contemplates that creditors will settle an individual's debts for less than the principal amount of the debt, compensation for services in connection with settling a debt may not exceed, with respect to each debt, 30% of the excess of the principal amount of the debt over the amount paid the creditor pursuant to the plan, less to the extent it has not been credited against an earlier settlement fee:

(a) the fee charged pursuant to Subsection (4)(b)(i); and

(b) the aggregate of fees charged pursuant to Subsection (4)(b)(ii).

(7) Subject to adjustment of the dollar amount pursuant to Subsection 13-42-132(6), if a payment to a provider by an individual under this chapter is dishonored, a provider may impose a reasonable charge on the individual, not to exceed the lesser of \$25 and the amount permitted by law other than this chapter.

13-42-124. Voluntary contributions.

A provider may not solicit a voluntary contribution from an individual or an affiliate of the individual for any service provided to the individual. A provider may accept voluntary contributions from an individual but, until 30 days after completion or termination of a plan, the aggregate amount of money received from or on behalf of the individual may not exceed the total amount the provider may charge the individual under Section 13-42-123.

13-42-125. Voidable agreements.

(1) If a provider imposes a fee or other charge or receives money or other payments not authorized by Section 13-42-123 or 13-42-124, the individual may void the agreement and recover as provided in Section 13-42-135.

(2) If a provider is not registered as required by this chapter when an individual assents to an agreement, the agreement is voidable by the individual.

(3) If an individual voids an agreement under Subsection (2), the provider does not have a claim against the individual for breach of contract or for restitution.

13-42-126. Termination of agreements.

(1) If an individual who has entered into an agreement fails for 60 days to make payments required by the agreement, a provider may terminate the agreement.

(2) If a provider or an individual terminates an agreement, the provider shall immediately return to the individual:

(a) any money of the individual held in trust for the benefit of the individual; and

(b) 65% of any portion of the set-up fee received pursuant to Subsection 13-42-123(4)(b) which has not been credited against settlement fees.

13-42-127. Periodic reports and retention of records.

(1) A provider shall provide the accounting required by Subsection (2):

(a) upon cancellation or termination of an agreement; and

(b) before cancellation or termination of any agreement:

(i) at least once each month; and

(ii) within five business days after a request by an individual, but the provider need not comply with more than one request in any calendar month.

(2) A provider, in a record, shall provide each individual for whom it has established a plan an accounting of the following information:

(a) the amount of money received from the individual since the last report;

(b) the amounts and dates of disbursement made on the individual's behalf, or by the individual upon the direction of the provider, since the last report to each creditor listed in the plan;

(c) the amounts deducted from the amount received from the individual;

(d) the amount held in reserve; and

(e) if, since the last report, a creditor has agreed to accept as payment in full an amount less than the principal amount of the debt owed by the individual:

(i) the total amount and terms of the settlement;

(ii) the amount of the debt when the individual assented to the plan;

(iii) the amount of the debt when the creditor agreed to the settlement; and

(iv) the calculation of a settlement fee.

(3) A provider shall maintain records for each individual for whom it provides debt-management services for five years after the final payment made by the individual and produce a copy of them to the individual within a reasonable time after a request for them. The provider may use electronic or other means of storage of the records.

13-42-128. Prohibited acts and practices.

(1) A provider may not, directly or indirectly:

(a) misappropriate or misapply money held in trust;

(b) settle a debt on behalf of an individual for more than 50% of the principal amount of the debt owed a creditor, unless the individual assents to the settlement after the creditor has assented;

- (c) take a power of attorney that authorizes it to settle a debt, unless the power of attorney expressly limits the provider's authority to settle debts for not more than 50% of the principal amount of the debt owed a creditor;
- (d) exercise or attempt to exercise a power of attorney after an individual has terminated an agreement;
- (e) initiate a transfer from an individual's account at a bank or with another person unless the transfer is:
 - (i) a return of money to the individual; or
 - (ii) before termination of an agreement, properly authorized by the agreement and this chapter, and for:
 - (A) payment to one or more creditors pursuant to a plan; or
 - (B) payment of a fee;
- (f) offer a gift or bonus, premium, reward, or other compensation to an individual for executing an agreement;
- (g) offer, pay, or give a gift or bonus, premium, reward, or other compensation to a person for referring a prospective customer, if the person making the referral has a financial interest in the outcome of debt-management services provided to the customer, unless neither the provider nor the person making the referral communicates to the prospective customer the identity of the source of the referral;
- (h) receive a bonus, commission, or other benefit for referring an individual to a person;
- (i) structure a plan in a manner that would result in a negative amortization of any of an individual's debts, unless a creditor that is owed a negatively amortizing debt agrees to refund or waive the finance charge upon payment of the principal amount of the debt;
- (j) compensate its employees on the basis of a formula that incorporates the number of individuals the employee induces to enter into agreements;
- (k) settle a debt or lead an individual to believe that a payment to a creditor is in settlement of a debt to the creditor unless, at the time of settlement, the individual receives a certification by the creditor that the payment is in full settlement of the debt;
- (l) make a representation that:
 - (i) the provider will furnish money to pay bills or prevent attachments;
 - (ii) payment of a certain amount will permit satisfaction of a certain amount or range of indebtedness; or
 - (iii) participation in a plan will or may prevent litigation, garnishment, attachment, repossession, foreclosure, eviction, or loss of employment;
- (m) misrepresent that it is authorized or competent to furnish legal advice or perform legal services;
- (n) represent that it is a not-for-profit entity unless it is organized and properly operating as a not-for-profit under the law of the state in which it was formed or that it is a tax-exempt entity unless it has received certification of tax-exempt status from the Internal Revenue Service;
- (o) take a confession of judgment or power of attorney to confess judgment against an individual;
- (p) employ an unfair, unconscionable, or deceptive act or practice, including the knowing omission of any material information; or
- (q) make or use any untrue or misleading statement:
 - (i) to the administrator; or
 - (ii) in the provision of services subject to this chapter.
- (2) If a provider furnishes debt-management services to an individual, the provider may not, directly or indirectly:
 - (a) purchase a debt or obligation of the individual;
 - (b) receive from or on behalf of the individual:
 - (i) a promissory note or other negotiable instrument other than a check or a demand draft; or

- (ii) a post-dated check or demand draft;
 - (c) lend money or provide credit to the individual, except as a deferral of a settlement fee at no additional expense to the individual;
 - (d) obtain a mortgage or other security interest from any person in connection with the services provided to the individual;
 - (e) except as permitted by federal law, disclose the identity or identifying information of the individual or the identity of the individual's creditors, except to:
 - (i) the administrator, upon proper demand;
 - (ii) a creditor of the individual, to the extent necessary to secure the cooperation of the creditor in a plan; or
 - (iii) the extent necessary to administer the plan;
 - (f) except as otherwise provided in Subsection 13-42-123(6), provide the individual less than the full benefit of a compromise of a debt arranged by the provider;
 - (g) charge the individual for or provide credit or other insurance, coupons for goods or services, membership in a club, access to computers or the Internet, or any other matter not directly related to debt-management services or educational services concerning personal finance; or
 - (h) furnish legal advice or perform legal services, unless the person furnishing that advice to or performing those services for the individual is licensed to practice law.
- (3) This chapter does not authorize any person to engage in the practice of law.
- (4) A provider may not receive a gift or bonus, premium, reward, or other compensation, directly or indirectly, for advising, arranging, or assisting an individual in connection with obtaining, an extension of credit or other service from a lender or service provider, except for educational or counseling services required in connection with a government-sponsored program.
- (5) Unless a person supplies goods, services, or facilities generally and supplies them to the provider at a cost no greater than the cost the person generally charges to others, a provider may not purchase goods, services, or facilities from the person if an employee or a person that the provider should reasonably know is an affiliate of the provider:
- (a) owns more than 10% of the person; or
 - (b) is an employee or affiliate of the person.

13-42-129. Notice of litigation.

No later than 30 days after a provider has been served with notice of a civil action for violation of this chapter by or on behalf of an individual who resides in this state at either the time of an agreement or the time the notice is served, the provider shall notify the administrator in a record that it has been sued.

13-42-130. Advertising.

A provider that advertises debt-management services shall disclose, in an easily comprehensible manner, the information specified in Subsections 13-42-117(4)(c) and (d).

13-42-131. Liability for the conduct of other persons.

If a provider delegates any of its duties or obligations under an agreement or this chapter to another person, including an independent contractor, the provider is liable for conduct of the person which, if done by the provider, would violate the agreement or this chapter.

13-42-132. Powers of administrator.

(1) The administrator may act on its own initiative or in response to complaints and may receive complaints, take action to obtain voluntary compliance with this chapter, refer cases to the attorney general, and seek or provide remedies as provided in this chapter.

(2) The administrator may investigate and examine, in this state or elsewhere, by subpoena or otherwise, the activities, books, accounts, and records of a person that provides or offers to provide debt-management services, or a person to which a provider has delegated its obligations under an agreement or this chapter, to determine compliance with this chapter. Information that identifies individuals who have agreements with the provider shall not be disclosed to the public. In connection with the investigation, the administrator may:

- (a) charge the person the reasonable expenses necessarily incurred to conduct the examination;
- (b) require or permit a person to file a statement under oath as to all the facts and circumstances of a matter to be investigated; and
- (c) seek a court order authorizing seizure from a bank at which the person maintains a trust account required by Section 13-42-122, any or all money, books, records, accounts, and other property of the provider that is in the control of the bank and relates to individuals who reside in this state.

(3) The administrator may adopt rules to implement the provisions of this chapter in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

(4) The administrator may enter into cooperative arrangements with any other federal or state agency having authority over providers and may exchange with any of those agencies information about a provider, including information obtained during an examination of the provider.

(5) The administrator shall establish fees in accordance with Section 63-38-3.2 to be paid by providers for the expense of administering this chapter.

(6) The administrator, by rule, shall adopt dollar amounts instead of those specified in Sections 13-42-102, 13-42-105, 13-42-109, 13-42-113, 13-42-123, 13-42-133, and 13-42-135 to reflect inflation, as measured by the United States Bureau of Labor Statistics Consumer Price Index for All Urban Consumers or, if that index is not available, another index adopted by rule by the administrator. The administrator shall adopt a base year and adjust the dollar amounts, effective on July 1 of each year, if the change in the index from the base year, as of December 31 of the preceding year, is at least 10%. The dollar amount must be rounded to the nearest \$100, except that the amounts in Section 13-42-123 must be rounded to the nearest dollar.

(7) The administrator shall notify registered providers of any change in dollar amounts made pursuant to Subsection (6) and make that information available to the public.

13-42-133. Administrative remedies.

(1) The administrator may enforce this chapter and rules adopted under this chapter by taking one or more of the following actions:

- (a) ordering a provider or a director, employee, or other agent of a provider to cease and desist from any violations;
- (b) ordering a provider or a person that has caused a violation to correct the violation, including making restitution of money or property to a person aggrieved by a violation;
- (c) subject to adjustment of the dollar amount pursuant to Subsection 13-42-132(6), imposing on a provider or a person that has caused a violation an administrative fine not exceeding \$10,000 for each violation;
- (d) prosecuting a civil action to:
 - (i) enforce an order; or
 - (ii) obtain restitution or an injunction or other equitable relief, or both; or
- (e) intervening in an action brought under Section 13-42-135.

(2) Subject to adjustment of the dollar amount pursuant to Subsection 13-42-132(6), if a person violates or knowingly authorizes, directs, or aids in the violation of a final order issued under Subsection (1)(a) or (b), the administrator may impose an administrative fine not exceeding \$20,000 for each violation.

(3) The administrator may maintain an action to enforce this chapter in any county.

(4) The administrator may recover the reasonable costs of enforcing the chapter under Subsections (1) through (3), including attorney's fees based on the hours reasonably expended and the hourly rates for attorneys of comparable experience in the community.

(5) In determining the amount of an administrative fine to impose under Subsection (1) or (2), the administrator shall consider the seriousness of the violation, the good faith of the violator, any previous violations by the violator, the deleterious effect of the violation on the public, the net worth of the violator, and any other factor the administrator considers relevant to the determination of the administrative fine.

(6) All money received through administrative fines imposed under this chapter shall be deposited in the Consumer Protection Education and Training Fund created by Section 13-2-8.

13-42-134. Suspension, revocation, or nonrenewal of registration.

(1) In this section, "insolvent" means:

(a) having generally ceased to pay debts in the ordinary course of business other than as a result of good-faith dispute;

(b) being unable to pay debts as they become due; or

(c) being insolvent within the meaning of the federal bankruptcy law, 11 U.S.C. Section 101 et seq.

(2) The administrator may suspend, revoke, or deny renewal of a provider's registration if:

(a) a fact or condition exists that, if it had existed when the registrant applied for registration as a provider, would have been a reason for denying registration;

(b) the provider has committed a material violation of this chapter or a rule or order of the administrator under this chapter;

(c) the provider is insolvent;

(d) the provider or an employee or affiliate of the provider has refused to permit the administrator to make an examination authorized by this chapter, failed to comply with Subsection 13-42-132(2)(b) within 15 days after request, or made a material misrepresentation or omission in complying with Subsection 13-42-132(2)(b); or

(e) the provider has not responded within a reasonable time and in an appropriate manner to communications from the administrator.

(3) If a provider does not comply with Subsection 13-42-122(6) or if the administrator otherwise finds that the public health or safety or general welfare requires emergency action, the administrator may order a summary suspension of the provider's registration, effective on the date specified in the order.

(4) If the administrator suspends, revokes, or denies renewal of the registration of a provider, the administrator may seek a court order authorizing seizure of any or all of the money in a trust account required by Section 13-42-122, books, records, accounts, and other property of the provider which are located in this state.

(5) If the administrator suspends or revokes a provider's registration, the provider may appeal and request a hearing pursuant to Title 63, Chapter 46b, Administrative Procedures Act.

13-42-135. Private enforcement.

(1) If an individual voids an agreement pursuant to Subsection 13-42-125(2), the individual may recover in a civil action all money paid or deposited by or on behalf of the individual pursuant to the agreement, except amounts paid to creditors, in addition to the recovery under Subsections (3)(c) and (d).

(2) If an individual voids an agreement pursuant to Subsection 13-42-125(1), the individual may recover in a civil action three times the total amount of the fees, charges, money, and payments made by the individual to the provider, in addition to the recovery under Subsection (3)(d).

- (3) Subject to Subsection (4), an individual with respect to whom a provider violates this chapter may recover in a civil action from the provider and any person that caused the violation:
- (a) compensatory damages for injury, including noneconomic injury, caused by the violation;
 - (b) except as otherwise provided in Subsection (4) and subject to adjustment of the dollar amount pursuant to Subsection 13-42-132(6), with respect to a violation of Section 13-42-117, 13-42-119, 13-42-120, 13-42-121, 13-42-122, 13-42-123, 13-42-124, or 13-42-127, or Subsection 13-42-128(1), (2), or (4), the greater of the amount recoverable under Subsection (3)(a) or \$5,000;
 - (c) punitive damages; and
 - (d) reasonable attorney's fees and costs.
- (4) In a class action, except for a violation of Subsection 13-42-128(1)(e), the minimum damages provided in Subsection (3)(b) do not apply.
- (5) In addition to the remedy available under Subsection (3), if a provider violates an individual's rights under Section 13-42-120, the individual may recover in a civil action all money paid or deposited by or on behalf of the individual pursuant to the agreement, except for amounts paid to creditors.
- (6) A provider is not liable under this section for a violation of this chapter if the provider proves that the violation was not intentional and resulted from a good-faith error notwithstanding the maintenance of procedures reasonably adapted to avoid the error. An error of legal judgment with respect to a provider's obligations under this chapter is not a good-faith error. If, in connection with a violation, the provider has received more money than authorized by an agreement or this chapter, the defense provided by this Subsection (6) is not available unless the provider refunds the excess within two business days of learning of the violation.
- (7) The administrator shall assist an individual in enforcing a judgment against the surety bond or other security provided under Section 13-42-113 or 13-42-114.

13-42-136. Violation of Consumer Sales Practices Act.

If an act or practice of a provider violates both this chapter and Chapter 11, Utah Consumer Sales Practices Act, an individual may not recover under both for the same act or practice.

13-42-137. Statute of limitations.

- (1) An action or proceeding brought pursuant to Subsection 13-42-133(1), (2), or (3) must be commenced within four years after the conduct that is the basis of the administrator's complaint.
- (2) An action brought pursuant to Section 13-42-135 must be commenced within two years after the latest of:
- (a) the individual's last transmission of money to a provider;
 - (b) the individual's last transmission of money to a creditor at the direction of the provider;
 - (c) the provider's last disbursement to a creditor of the individual;
 - (d) the provider's last accounting to the individual pursuant to Subsection 13-42-127(1);
 - (e) the date on which the individual discovered or reasonably should have discovered the facts giving rise to the individual's claim; or
 - (f) termination of actions or proceedings by the administrator with respect to a violation of the chapter.
- (3) The period prescribed in Subsection (2)(e) is tolled during any period during which the provider or, if different, the defendant has materially and willfully misrepresented information required by this chapter to be disclosed to the individual, if the information so misrepresented is material to the establishment of the liability of the defendant under this chapter.

13-42-138. Uniformity of application and construction.

In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

13-42-139. Relation to Electronic Signatures in Global and National Commerce Act.

This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

13-42-140. Transitional provisions -- Application to existing transactions.

(1) Transactions entered into before July 1, 2007 and the rights, duties, and interests resulting from them may be completed, terminated, or enforced as required or permitted by a law amended, repealed, or modified by this chapter as though the amendment, repeal, or modification had not occurred.

(2) (a) A person registered under Chapter 21, Credit Services Organizations Act, on June 30, 2007, that is required to be registered under this chapter on July 1, 2007, shall be considered to be registered under this chapter until the license in effect on June 30, 2007, expires.

(b) Notwithstanding Subsection (2)(a), except for the registration requirement, a person subject to this chapter shall comply with this chapter for any transaction entered into on or after July 1, 2007.

13-42-141. Severability.

If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter that can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.